CF0000061340

Division Bench ( riminal)

IN THE HIGH COURT OF JUDICATURE, MADHYA PRADESH AT JABALPUR

CRIMINAL APPEAL NO. 1937 OF 1997

1. Jailal, son of Bhojram Yadav,
   aged 51 years.
2. Rohit ram, son of Bhojram Yadav,
   aged 33 years,
   Both cultivators and residents of
   village Bitkuli, Police Station
   Seepat, District Bilaspur.

...APPELLANTS

12758
15597
Shri A.K. Dubey
..... Advocate
Rlo. A. R.

VERSUS

The State of Madhya Pradesh,

...RESPONDENT

Received Copy of Petition With Annexures
CLERK
O/o. Advocate General
M. P. JABALPUR

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE

(36)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

# आदेश पत्रक

A.P.R.

मामला क्रमांक Cr.A. 1937/97 सन् 200

विरुद्ध

31/1/06

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ**

**CRIMINAL APPEAL NO.1937/1997**

**Applicant : Jailal & Another**

**Vs.**

**Respondents : State of Madhya Pradesh**

Shri Neeraj Mehta learned counsel for the appellants.

Shri Akhil Mishra, learned P.L. and Shri Ashish Shukla, Addl. Public Prosecutor for the respondent/State.

**ORAL JUDGMENT**
**(03.01.2006)**

**Per L.C. Bhadoo,J**

By this appeal, accused/appellants Jailal & Rohit Ram have questioned the legality of judgment of conviction and order of sentence dated 27.08.1997 passed by learned Additional Sessions Judge, Bilaspur in Sessions Trial No. 336/1991 whereby learned Additional Sessions Judge after holding the accused appellants guilty for commission of the offences convicted them under Sections 302/34 and 323/34 of the IPC and sentenced each of the accused person to undergo imprisonment for life and RI for one year respectively on both counts.

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# आदेश पत्रक 2

मामला क्रमांक Cr.A. 1937/97 सन् 200

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| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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2. The case of the prosecution in brief is that injured Lalsai made a First Information Report in police station Seepat on 31st May 1991 at about 2.45 p.m. to the effect that a day before thereto in the night at 9.00 p.m. there was a Panchayat of the community in the thrashing field of the deceased as there was some dispute between Bhojram and Udayram. During that period sons of Bhojram namely Jailal Yadav and Rohit Yadav appeared on the scene of occurence. Jailal picked up a wooden club which was fixed on the ground and Rohit brought a lathi from his house and they were prepared to beat Udayram on which he tried to intervene and on this Jailal attacked on the left side of his neck with the wooden club. He also attacked on his left forearm. By the time other persons could intervene, for the third time he assaulted him on his head and as a result of which he fell down. Jailal and Rohit were saying that "finish this old man". By that time his son-in-law namely Daduram came there, Jailal attacked him also on his head with wooden club. When Jagmohan Yadav came there Jailal also attacked him with wooden club on his chest. Accused Rohit assaulted Munudai with lathi. The Station House Officer, on the basis of this report, registered First Information Report (Ex.P/22) for commission of the offences under Sections 307 and 323 read with Section 34 of the IPC and took up investigation. Injured persons namely, Lalsai, Munudai, Daduram and Jagmohan were sent for medical examination to District Hospital, Bilaspur where injuries were examined by Dr. G.Venkatesh (P.W.10) and injury reports Ex.P.23,24,25 and 26

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# आदेश पत्रक 3

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| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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were prepared. However Jailal was admitted in the hospital who succumbed to the injuries sustained by him. Post mortem of the body was conducted by Dr. K.K.Sao (P.W.16) and the post mortem report EX.P.12 was prepared. The doctor who conducted the post mortem found that there was a lacerated wound in the size of 2x1 inch on the vertex of the deceased and humorous bone of left hand as well as the right parietal region was found fractured and blood was found clotted in his extra dural part. Cause of death was coma as a result of head injury which was sufficient to cause death in the ordinary course of nature.

3. The Investigating Officer during investigation took into possession wooden club used by Jailal and lathi used by Rohit as the weapon of offence in the crime in question. After completion of the investigation, the charge sheet was filed against the accused Jailal and Rohit in the Court of Judicial Magistrate, Bilaspur who committed the case to Sessions Judge Bilaspur from where learned Additional Sessions Judge received the case on transfer for trial.

4. Prosecution in order to establish the charge against the accused/ appellants examined as many as 16 witnesses. Statements of accused persons were also recorded under Section 313 of the Code of Criminal Procedure. They denied the case of prosecution and stated that they have been falsely implicated in the crime.

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# आदेश पत्रक 4

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5. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused persons convicted and sentenced the accused persons as mentioned in paragraph one of this judgment.

6. As far as case of accused Jailal is concerned, Shri Ashish Shukla, Additional Public Prosecutor submitted a written communication to the effect that Jailal had expired on 28.11.2004 in Central Jail, Bilaspur while undergoing sentence as per the information received from Central Jail, Bilaspur. No application for prosecuting this appeal has been filed by the legal heirs of accused Jailal, therefore, the appeal filed by accused Jailal stands abated. An information to this effect be sent to Superintendent of Central Jail, Bilaspur for information and necessary action.

7. Counsel for the accused/appellants did not dispute the death of Lalsai as homicidal in nature. Apart from that from the evidence of P.W.16, Dr. K.K.Sao who conducted the postmortem on the body of the deceased it is established that death was homicidal in nature as Lalsai died on account of the injuries received on his head. The medical evidence stands corroborated by the evidence of P.W.1 Anantram, P.W.3 Munuda, P.W.4 Jagmohan, P.W.5 Daduram & P.W.6 Mohanlal who witnessed the crime, therefore it is established that death of Lalsai was homicidal in nature.

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8. Now so far as involvement of accused Rohit in the commission of murder of Lalsai is concerned, counsel for the accused/appellants argued that First Information Report Ex.P.22 was lodged by none else than the injured Lasai himself in which he had not stated that Rohit attacked him. He further submitted that except P.W.1 Anantram none of the other eyewitnesses has stated that Rohit assaulted Lalsai, therefore evidence of Anahtram is not supported even by the dying declaration made by the deceased and other injured witnesses.

9. On the other hand, Mr. Akhil Mishra, Panel Lawyer and Mr. Ashish Shukla, Additional Public Prosecutor supported the impugned judgment.

10. In order to appreciate the arguments advanced by counsel for the parties we have perused the First Information Report lodged by deceased Lalsai in which he has categorically stated that all the injuries were caused by Jailal on his head and hand. He further stated that Rohit assaulted Munudai only. P.W.2 Udayram who was an injured witness has categorically stated in first paragraph of his evidence that in his presence Rohit has not assaulted Lalsai. Similarly Munudai P.W.3 to whom accused Rohit assaulted with club has not stated anything to the effect that accused Rohit assaulted Lalsai whereas she has categorically stated that accused Jailal assaulted Lalsai on his head with club as a result of which Lalsai fell down. Even P.W.4 Jagmohan has not stated that Rohit

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assaulted Lalsai. P.W.1 Anantram has stated that Rohit assaulted Jagmohan whereas Jagmohan P.W.4 has not stated that Rohit assaulted him, therefore, in view of above evidence the evidence of P.W.1 Anantram appears to be exaggerated as against Rohit that Rohit assaulted Lalsai. Therefore to this extent the evidence of PW-1 Anantram cannot be believed for the reason that even injured Lalsai and other eyewitnesses have not corroborated the evidence of PW-1 Anantram.

11. Now so far as charge under Section 302/34 of the IPC is concerned, in order to attract the provisions of Section 34 of IPC in respect of accused, the Apex Court in the matter of **Girija Shankar Vs. State of U.P. reported in AIR SCW 810** has held that distinctive feature of Section is the element of participation in action. The liability of one person for an offence committed by another in the course of Criminal Act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which

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they are charged with the aid of Section 34, be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of the crime. The true concept of Section 34 is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. The existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision. Thus in order to convict an accused with the aid of Section 34 of the IPC it is necessary that there must be common intention of all the accused persons and the act must be in furtherance of their common intention.

12. Applying the above principal if we look into the evidence of the present case, as per the prosecution evidence there was a Panchayat of the community in the thrashing field of the deceased Lalsai and during that Panchayat some altercation took place between Bhojram- the father of the accused persons and P.W. 2 Udayram who is brother of Bhojram and when Lal Sai came to intervene, in that process all of sudden accused Jailal pulled a wooden club which was fixed in the earth at the place of occurrence and Rohit came with Lathi and Jailal started assaulting Lalsai in

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| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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which Rohit had not participated, therefore from the above fact it cannot be inferred that Rohit was sharing intention with Jailal to cause death of Lalsai. Jailal assaulted Lalsai three times as per the First Information Report, and there is no allegation in the F.I.R. which was lodged by none else than deceased Lalsai himself that accused Rohit in any manner took part in assaulting him or he instigated Jailal to assault Lalsai. From the evidence on record the common intention regarding the assault caused by Jailal cannot be attributed to Rohit for the injuries caused by Jailal to Lalsai because Rohit was not sharing the intention with Jailal for the deadly assault made by Jailal. Therefore the findings of the trial Court convicting accused Rohit with the aid of Section 34 of the IPC for commission of murder of Lalsai cannot be sustained as the same is not based on any legal evidence.

13. So far as the conviction under Section 323/34 of the IPC is concerned, even in the F.I.R. given by Lalsai he had mentioned that accused Rohit assaulted Munnudai with the stick and Munnudai who has been examined as P.W. 3 has categorically stated in her evidence that Rohit assaulted her on her hand with stick. The same stands corroborated by the medical evidence as Munnudai was examined by Dr. G. Venketesh who found that there was lacerated wound in the size of 2 and ½ x ½ inch on her hand which was simple in nature and caused by blunt object and injury report is Ex.P/15, therefore the offence under Section 323 of the IPC was

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established against the accused and finding of the trial Court to this effect does not suffer from any illegality or infirmity and the same does not require any interference by this Court as the same is based on legal evidence.

14. In the result, appeal of accused/appellant Jailal stands abated on account of his death during the pendency of this appeal. However, the appeal of accused Rohit is partly allowed and his conviction and sentence under Section 302/34 of the IPC are set aside and he is acquitted of that charge. However, conviction and sentence awarded under Section 323 of the IPC are maintained. The accused has already served the said sentence because he remained in custody during trial and this appeal for more than five years which has not been disputed by State counsel. Accused Rohit is on bail; therefore, his bail bonds are discharged.

15. The appeal thus stands disposed of.

**Sd/-**
**L.C. Bhadoo**
**Judge**

**Sd/-**
**Dhirendra Mishra**
**Judge**

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